

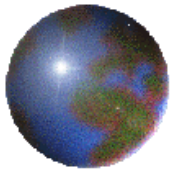
BIS DEEMED EXPORT PROGRAM

Bernard Kritzer

Director

Office of Strategic Trade and Foreign
Policy Controls

Bureau of Industry and Security



What is a Deemed Export?

Release in the United States of technology or source code subject to the Export Administration Regulations to a foreign national.

Such release is “deemed” to be an export to the home country or countries of the foreign national.

See Section 734.2(b)(2)(ii) of the EAR.



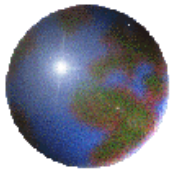
the Rule

A foreign national is subject to the deemed port rule **except**:

- A foreign national granted U.S. citizenship;

- A foreign national granted permanent residence status (i.e., “Green Card” holders);

- A foreign national granted status as a “protected individual” under 8 U.S.C. 1324b(a)(3). Protected individuals include political refugees and political asylum holders.



Examples of Deemed Export Releases

- Visit of foreign delegations for company internal technical conferences.
- Visual inspection (as reading technical specifications, plans, blueprints, etc.) by foreign nationals.
- Providing technical assistance (including verbal exchanges) to foreign nationals.



quired?

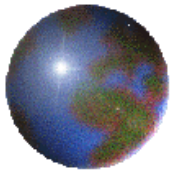
Determine the technologies to be released. It is critical to classify the technology.

Is the technology described in an entry on the Commerce Control List?

If so, does a License Exception apply?

Is the technology EAR99?

Is the technology publicly available?



Publicly Available Information

Technologies which are "publicly available" do not require a license. These include:

- Patent applications;
- Publicly available technology and software (other than software and technology controlled as encryption items) that are already published or will be published;
- Technology which arises during or as a result of fundamental research; or
- Technology which is educational.



earch

Remember:

Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.

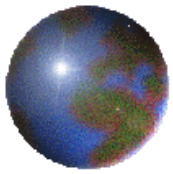


Government Agencies

Use of controlled technologies by U.S.

Government agencies and affiliates are treated in the same way as release of controlled technologies by private entities.

- National Security Classification and export controls are separate concepts.
- Federal fundamental research and private research receive identical licensing review.



Example: Conferences

A conference is “open” if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes.

The release of information at an open conference is not subject to the EAR.

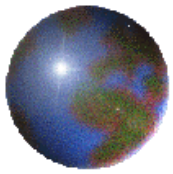


Technologies discussed in open seminars and conferences are considered to be publicly available and are outside the scope of the EAR.



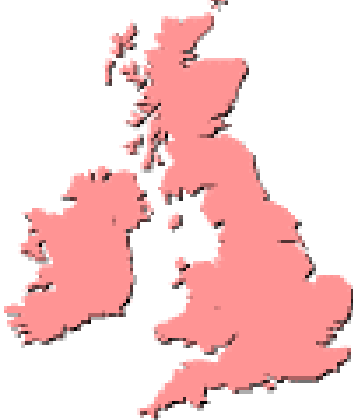
ired?

- Determine the home country of the foreign national.
- Technology and home country of the foreign national determine licensing requirements.

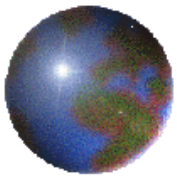


Home Country (Permanent Residency)

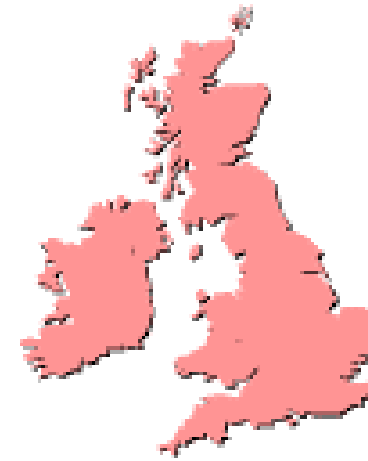
Release of controlled technology to a foreign national of one country, say India, who has obtained permanent residency in another, say the U.K., is treated as if the shipment were being made to the U.K. and licensing requirements would be the same as for a British national in the U.K.



If the former Indian national becomes a British citizen, transfers of technology would be viewed as transfers to the U.K.



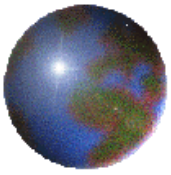
Home Country (Dual Citizenship)



As a general principle, a foreign national's most recently obtained citizenship governs the licensing requirement.



If an Indian foreign national becomes a citizen of the U.K. but retains Indian citizenship, the most recent citizenship is with the U.K. and releases of technology would be viewed as releases to the U.K.



Remember

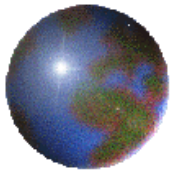
Although the deemed export rule may apply, this does not automatically mean that a license is required.

The technology to be released to the foreign national may be:

- Publicly Available;

- EAR99;

- License Exception eligible (e.g., TSR, ENC)



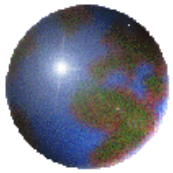
Parties of Concern

Denied Persons List

Known violators of the regulations

Entity List

Entities (public and private sector) involved with weapons of mass destruction programs



Listed Entity Involvement

Release of controlled technology to an employee of a listed entity is treated as a release of controlled technology to the listed entity itself.



Deemed Export ECCNs

5D101
Telemetry Equipment



5D101
Telemetry **Software**



5E101
Telemetry **Technology**

The deemed
export rule
primarily
affects
technology
and software.

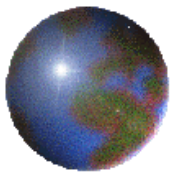


Key Licensed Technologies for Ports

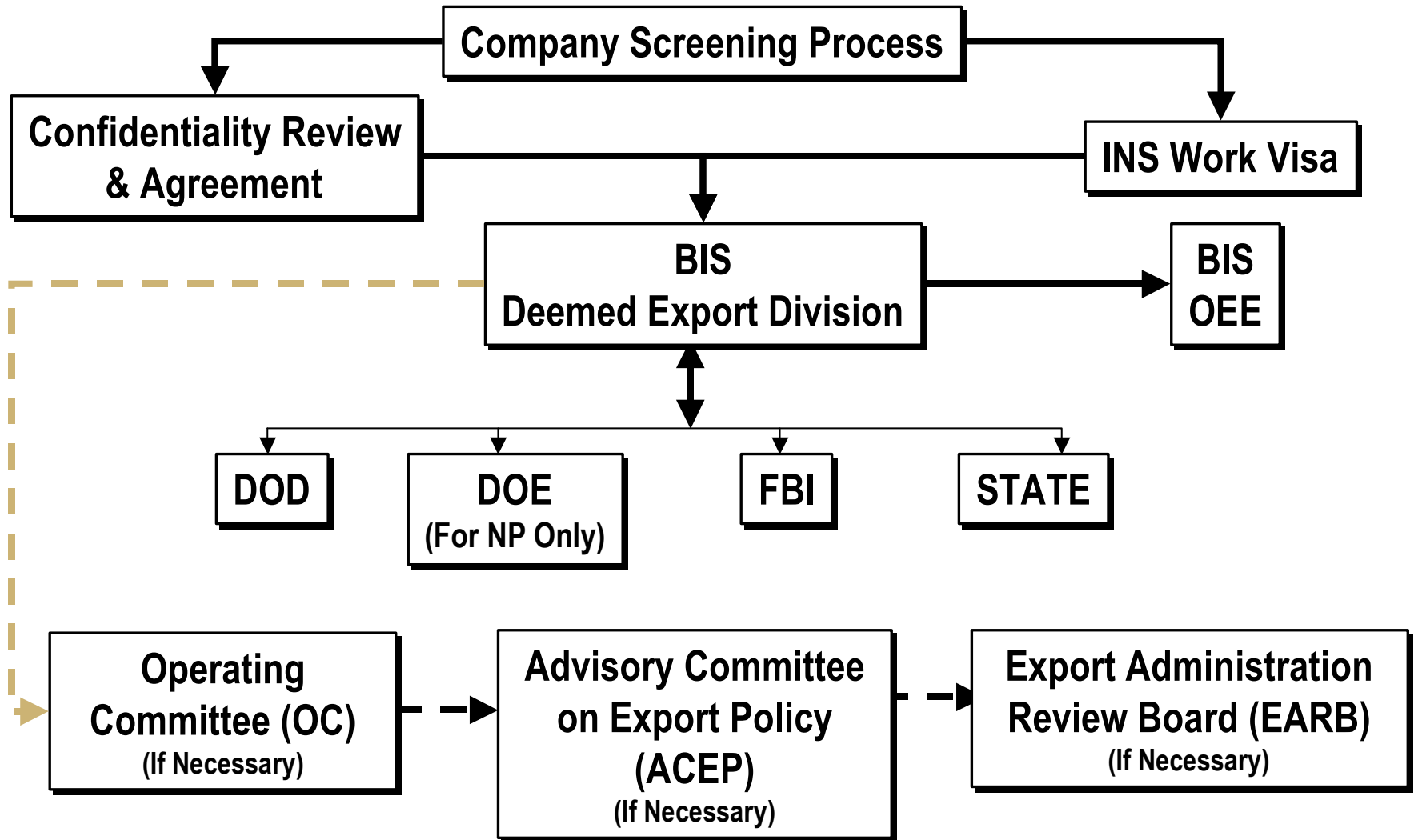
Semiconductor & Electronics

Telecommunications

Computer Systems



Review and Escalation Process





· **Évaluation Factors**

- Personal background, including visa status
- Technology and purpose of the release
- Applicant's Internal Control Program
- Projected outcome of employment
- Permanent employee



on: Explanation

Entities of all parties to the transaction

Exact project location (where the technology or software will be used)

- Type of technology
- Form in which the technology will be released and the uses for which the technology will be employed.
- Technical scope
- Availability abroad of comparable foreign technology or software
- Applicant's internal technology control plan



ation: **on National's Résumé**

educational institutions attended beyond high school, with street addresses and degrees and/or certificates received

- All positions held, with employers' names and street addresses, and brief description of work done
- All time from high school graduation should be accounted for and presented in month/year format, with no gaps greater than 30 consecutive days
- Brief abstracts of all scientific and technical papers published, and presentations at scientific and technical conferences



Information

Applications are easier to approve if they include details such as:

- Any strong ties to the U.S. (e.g., family here)
- No ties to home country (no bank account, immediate family, etc.)
- Any special benefits or expertise the foreign national brings to the applicant (i.e., why the foreign national brings more to the company than he or she will take away)